



2 DEC 2000

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Patent Cooperation Treaty
Legal Office

Address: Assistant Commissioner for Patents
Box PCT
Washington, D.C. 20231

#3

Nexsen Pruet Jacobs & Pollard, LLP
P.O. Box 10107 -Federal Station
Greenville, SC 29603-0107

In re Application of
James
Application No.: 09/674996
PCT No.: PCT/US99/16991
Int. Filing Date: 27 July 1999
Priority Date: 27 July 1998
Attorney's Docket No.: 25529-02
For: Automatically Variable Stride Walk-
Run Stepper Pedal Exerciser

DECISION ON
PETITION UNDER
37 CFR 1.137(b)

This is in response to the petition under 37 CFR § 1.137(b)" filed on 02 November 2000.

BACKGROUND

This international application was filed on 27 July 1999, and claimed a priority date of 27 July 1998. No Demand electing the United States was filed prior to the elapse of 19 months from the international filing date. Accordingly, the twenty-month time period to pay the basic national fee in the United States expired as of midnight on 27 March 2000. This international application became abandoned with respect to the United States for failure to timely pay the required basic national fee.

Applicant filed the instant petition and accompanying fees and papers on 02 November 2000.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information

where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Regarding requirement (1), the petition was accompanied by the required reply in the form of the basic national fee.

Concerning requirement (2), the petition is accompanied by the required petition fee.

Regarding requirement (3), the petition includes a statement that "the unintentional abandonment occurred for failure to timely enter the U.S. National Phase of PCT prosecution under Chapter I by the deadline of March 27, 2000 due to a docketing mistake. The entire delay was unintentional." This statement is being construed as a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." Petitioner must notify the Patent and Trademark Office if such an interpretation of the statement in the petition is not correct. Thus, the statement in the petition is being accepted in satisfaction of 37 CFR 1.137(b)(3).

As to requirement (4), no terminal disclaimer is required because the international filing date of this application was later than 08 June 1995.

DECISION

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for continued processing, including the preparation and mailing of a Notification Acceptance (Form PCT/DO/EO/903). The 35 U.S.C. 371 date of this application is **02 November 2000**.



Leonard Smith
PCT Legal Examiner
PCT Legal Office



George M. Dombroske
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6721
Fax: (703) 308-6459